

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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)

**IMPLEMENTATION OF THE AFFORDABLE
CONNECTIVITY PROGRAM**

)

WC Docket No. 21-450

)

REPLY COMMENTS OF

**THE CITIES OF BOSTON, MASSACHUSETTS, CHICAGO, ILLINOIS, LOS
ANGELES, CALIFORNIA, WITH MONTGOMERY COUNTY, MARYLAND,
WASHINGTON, DC, AND THE TEXAS COALITION OF CITIES FOR UTILITY
ISSUES**

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The cities of Boston, Massachusetts, Chicago, Illinois, Los Angeles, California, with Montgomery County, Maryland, Washington, DC, and the Texas Coalition of Cities for Utility Issues (“Local Governments”) repeat our gratitude to the 117th Congress and President Biden for making possible the continuation of a broadband affordability subsidy through the Affordable Connectivity Program. Local Governments are equally grateful to the Commission, its leaders and professional staff, who are sacrificing time with family and friends over the Holiday Season to ensure smooth transitions from the Emergency Broadband Benefits Program to the Affordable Connectivity Program.

Local governments have three primary roles in federal broadband affordability programs: (1) providers of broadband services either directly or indirectly through the purchase and distribution of free or sponsored subscriptions and devices; (2) leaders in raising awareness and coordinating resources; and (3) consumer watchdogs. In assembling our reply comments, Local Governments respectfully request that the Commission ensure that there are no roadblocks to achieving each of these roles. We believe the Commission can do this by:

- Allowing for a seamless transition from EBB to ACP with an opt out exit.
- Transition EBB providers upon warranty they will follow ACP rules and were not involved with EBB fraudulent enrollment efforts.
- Protect and expand eligible bulk or sponsored purchasing programs.
- Establish a minimum speed level requirements for ACP eligibility.
- Ensure homeless & shelter household eligibility by adding two words and a comma.
- Provide granular data to assist in program expansion and ensure accurate success standards.
- Retain CEP qualification criteria
- Ban unlawful credit checks.

- Embrace that outreach is vital important and ensure that local governments are eligible as outreach partners.
- Recognize that lack of devices is a program challenge that must be addressed.

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I. INTRODUCTION

Chair Rosenworcel coined the phrase the homework gap and made its elimination her mission.¹ The cities of Boston, Massachusetts, Chicago, Illinois, Los Angeles, California, with Montgomery County, Maryland, Washington, DC, and the Texas Coalition of Cities for Utility Issues (“Local Governments”)² file these Reply Comments in response to the Public Notice³ issued by the Commission in this proceeding.

Local Governments align ourselves with Chair Rosenworcel in her mission to eliminate the “homework gap” and agree that the Infrastructure Investment and Jobs Act⁴ (“Act”) may be the nation’s “best shot” at closing the digital divide in this generation.⁵ Local Governments therefore repeat our gratitude to the 117th Congress and President Biden for passage of the Act, for among many reasons, the continuation of a broadband affordability subsidy program through the Affordable Connectivity Program.

¹ Jessica Rosenworcel, Acting Chairwoman, *Addressing the Homework Gap*, FCC (Feb. 1, 2021), <https://www.fcc.gov/news-events/notes/2021/02/01/addressing-homework-gap> (“Rosenworcel Statement”); see also *In Commerce Hearing, Tester Secures FCC’s Commitment to Rapid Implementation of Broadband Expansion in Infrastructure Bill* (Nov. 17, 2021), https://www.testersenate.gov/?p=press_release&id=8731.

² A description of the parties is attached hereto as Exhibit A. The cities of Chicago and Dallas are joining Boston, Montgomery County, the District of Columbia and TCCFUI in filing these Reply Comments and associate themselves with the Comments of Boston et al. (filed Dec. 8, 2021) (“Local Government Comments”).

³ Public Notice, *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450 (November 18, 2021) (“Public Notice”).

⁴ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), available at <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (“Act”).

⁵ Rosenworcel Statement.

Local Governments are also grateful to the Commission, its leaders and professional staff, who are sacrificing time with family and friends over this Holiday Season to ensure smooth transitions from the Emergency Broadband Benefits Program (“EBB”)⁶ to the Affordable Connectivity Program (“ACP”).⁷

II. LOCAL GOVERNMENTS STAND READY TO ASSIST COMMISSION IN MULTIPLE ROLES TO FACILITATE BROADBAND AFFORDABILITY

“Local governments have three primary roles to play in federal broadband affordability programs: as providers of broadband services directlyor through the purchase and distribution of free or prepaid subscriptions and devices; as leaders in raising awareness and coordinating resources,; and as consumer watchdogs.”⁸ In assembling our reply comments, we respectfully request that the Commission ensure that there are no roadblocks to achieving this three-fold mission.⁹ Likewise, Local Governments pledge support to Chair Rosenworcel and the Commission to assist in eliminating the homework gap. Local Governments believe this can best be achieved by:

⁶ The EBB Program was established in Section 904 of Division N – Additional Coronavirus Response and Relief, Title IX – Broadband Internet Access Service, in the Consolidated Appropriations Act. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. IX, § 904(c) 134 Stat. 1182, 2134 (2020), *available at* <https://www.congress.gov/bill/116th-congress/house-bill/133/text> (“Consolidated Appropriations Act”). Because so many of the issues are similar to those raised in this proceeding, here are links to the [Comments](#), [Reply Comments](#) and ex parte visits of [February 24, 2021](#), [April 21, 2021](#) made by Local Governments in the EBB docket.

⁷ Div. F, tit. V, § 60502(a)(2) of the Act.

⁸ Comments of the National League of Cities (filed Dec. 8, 2021) at 1. (“NLC Comments”)

⁹ Local Governments are pleased to see that providers feel the same way. *See, e.g.*, Comments of T-Mobile (filed Dec. 8, 2021) at iii. (“To ensure a successful Program, the Commission’s rules for ACP should continue to encourage widespread participation by providers, incentivize providers to develop innovative new service offerings to connect low-income households, and ensure that ACP reaches as many eligible households as possible.”)

A. A Seamless Transition From EBB To ACP Is Best Achieved With Assumed Transition With An Opt Out Exit.

Local Governments agree with USTelecom that the Commission should allow as much time as possible for providers and the Universal Service Administrative Company (“USAC”) to make necessary changes to their systems to facilitate a seamless transition from the EBB to the ACP.¹⁰ The difference between Local Governments and industry is that we believe providing time for a seamless transition ensures eligible household participation, not just provider participation, is maximized.¹¹ As explained by the Multicultural Media, Telecom, and Internet Council, “The Commission must ... interpret the provisions of the Infrastructure Act to ensure that the transition to the ACP is smooth and that as many households as possible can continue to receive the maximum benefits allowable for the longest period permissible.”¹²

Contrary to the broad agreement for a seamless and streamlined transition from EBB to ACP, the Notice proposes requiring all households seeking to participate in the ACP, including those households already enrolled in the EBB Program, to opt-in or affirmatively request

¹⁰ USTelecom Comments (filed Dec. 8, 2021) at 3. See also Comments of the Competitive Carriers Association (filed Dec. 8, 2021) at 1. (“[C]ritical that the Commission do whatever it can to minimize consumer confusion and to ensure that providers have the flexibility required to make a smooth transition to the Affordable Connectivity Program.” p. 1; Comments of Seattle (filed Dec. 8, 2021) at 1 (“[W]e support the Commission’s proposal that households enrolled in the EBB Program as of December 31, 2021, not be required to submit a new application to enroll in the ACP. However, we do not support the proposal to establish an opt-in process.”)

¹¹ Local Governments are not alone in seeking such a balanced approach. See Comments of The Competitive Carriers Association (filed Dec. 8, 2021) at 1. (“[C]ritical that the Commission do whatever it can to minimize consumer confusion and to ensure that providers have the flexibility required to make a smooth transition to the Affordable Connectivity Program.” Comments of Common Cause (filed Dec. 8, 2021) at 2-3 (“In transitioning from EBB to ACP, the Commission must establish low barriers to entry for eligible households to facilitate robust participation.”); Comments of National Hispanic Media Coalition (filed Dec. 8, 2021) at 2-6 (FCC should use the “lowest barriers” possible for eligible customers to transition from the EBB to the ACP.)

¹² Comments of Multicultural Media, Telecom, and Internet Council (MMTC) (filed Dec. 8, 2021) at 1-2.

enrollment in the ACP.¹³ ...Local Governments strongly disagree with this proposal and associate ourselves with numerous parties¹⁴ that believe the Commission should determine that households participating in the EBB Program before December 31, 2021 remain qualified for the ACP and automatically enrolled in the ACP unless they choose to opt-out.¹⁵ Requiring households to opt in “would likely lead to confusion and result in many households unknowingly and unwillingly dropping out of the ACP.”¹⁶

With the reduction in available subsidy from the EBB to the ACP program, Local Governments understand that after the transition period established by Congress that a weakness in the Opt In method could be a potential cost share by eligible households. Local governments believe that the marketplace has demonstrated that thirty dollars a month is more than enough to justify a fast broadband connection. Local Governments therefore believe that the FCC should make clear that any provider that is the beneficiary of an Opt-In transition must certify that they accept the ACP subsidy as full payment. If they do not accept the ACP payment as full subsidy,

¹³ Public Notice at ¶ 122.

¹⁴ CTIA Comments (filed Dec. 8, 2021) at (Opt-in is “fundamentally misguided, and should be rejected....”); National Lifeline Association Comments (filed Dec. 8, 2021) at ii. (Commission should automatically transition EBB households into the ACP, “with a notice and opportunity for opt-out, rather than requiring an affirmative consent opt-in.”); Verizon Ex Parte of December 14, 2021 at 1 (“Commission should not adopt an opt-in requirement for existing EBB households.”); See also Comments of ACA, USTelecom and Google Fiber, all of whom agree that consumers will simply take no action at all in response to an opt-in request.

¹⁵ Comments of National Lifeline Association (filed Dec. 8, 2021) at ii (Commission should boost enrollment in the ACP by automatically transitioning the people enrolled in the EBB program into the ACP, “with a notice and opportunity for opt-out, rather than requiring an affirmative consent opt-in.”)

¹⁶ Multicultural Media, Telecom and Internet Council Comments (filed Dec. 8, 2021) at 1-2.; See also T-Mobile Comments (filed Dec. 8, 2021) at 2. (Commission’s “first priority” should be ensuring an “orderly transition” from the EBB to the ACP, including minimizing any disruption to existing EBB recipients who want to move to the new program. Comments of AT&T Services, Inc. (filed Dec. 8, 2021) at 3. (“FCC should make it easy for participants in the EBBP to move to the new program without any gap in service.”)

they must obtain affirmative Opt-In communications from the eligible household, including a clear statement as to the new co-pay.

B. EBB Providers Should Also Transition Over Into ACP With Warranties

Local Governments agree that EBB providers should not have to submit new applications to participate in ACP if they affirmatively agree to be bound by the ACP rules and affirm that none of their salesmen were part of the EBB fraud unearthed by the FCC’s Inspector General office.¹⁷

C. Eligible Bulk or Sponsored Purchasing Programs Must Be Protected and Expanded.

Local Governments are grateful to the National League of Cities,¹⁸ NATOA¹⁹ and others for supporting the extension of access to ACP for households participating in bulk-billing options, including households in multi-tenant dwellings and households participating in local government bulk subscription programs. In practice, the administration of such programs, including household eligibility verification, is very similar to multitenant environments in which residents are billed by a landlord rather than directly by the broadband provider.²⁰ NLC urges the Commission to make locally-administered bulk subscription programs, in which additional

¹⁷ Memorandum, Office of Inspector General. *Advisory Regarding Fraudulent EBB Enrollments Based On USDA National School Lunch Program Community Eligibility Provision* (rel. Nov. 22, 2021) available at https://www.fcc.gov/sites/default/files/oig_advisory_cep_11222021.pdf. Local Governments agree with T-Mobile Comments at iii that with “the benefit of experience from the EBB Program, the Commission should ...take this opportunity to update its rules to make enrollment and reimbursement processes simpler, fairer, and more efficient.”

¹⁸ NLC Comments at 2.

¹⁹ Comments of the National Association of Telecommunications Officers and Advisors (filed Dec. 8, 2021) at 2.

²⁰ NLC Comments at 5.

subscription costs beyond the discounted amount are paid by a third party (such as a local government), eligible for inclusion along with landlord-administered bulk purchases.²¹

Local Governments believe that by making sponsored purchasing programs (especially those that might replace Emergency Connectivity Fund²² programs that may sunset absent additional funding) eligible for ACP support, may be the single best step the FCC can take to grow participation in ACP. It is not obvious from the EBB Tracer page (see Section II, F *infra* for additional on data needs) how many new households have been brought into the program and how many are existing broadband customers that have been transitioned by their existing provider. Anecdotally, Local Government believes that after seven months of outreach, that is where the growth has taken place. Allowing local governments (cities, counties and their respective school and library programs) to leverage existing or set up sponsored programs will result in hundreds of thousands of new enrollees, and EBB qualified providers such as like Comcast and RCN already offer these bulk program partnerships with local governments.

D. FCC Should Establish A Minimum Speed Level Requirement.

The Public Notice asks whether the FCC should provide clarity on “internet service offerings,” including whether to institute minimum standards for eligible plans.²³ Local Governments called for a minimum speed standard in our comments²⁴ and are grateful to the city

²¹ *Id.*

²² American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (“American Rescue Plan Act”). Section 7402 of the American Rescue Plan, establishing the Emergency Connectivity Fund. The ECF support will not be provided through contributions under Section 254(d) of the Communications Act of 1934. *Id.* § 7402(c)(4).

²³ Public Notice at ¶ 54.

²⁴ Comments of Boston et al (filed Dec. 8, 2021) at 11-16.

of Detroit,²⁵ Los Angeles County²⁶ and Starry for echoing our call for the Commission to establish a minimum speed for ACP funding or to use speed as a criteria for choosing among qualified providers.²⁷ Local Governments also agree with Los Angeles County and Starry that any speed established by the Commission should be adjusted over time to ensure ACP households “fully participate in digital society.”²⁸

Local Governments are disappointed that so many EBB providers, and likely ACP providers, would resist the establishment of minimum speed standards,²⁹ especially given how many providers are already offering significant speeds.³⁰

For example, the Wireless Internet Service Providers Association argued the Commission should not adopt minimum speed standards for ACP subsidized broadband services due to “the

²⁵ Comments of the City of Detroit, (filed Dec. 8, 2021) at 3. (“We fully support setting minimum service requirements to help ensure households are receiving competitive broadband services. The minimum service standard should be determined by the number of residents using the service. While the FCC believes 25/3 is high speed internet for a family, that ideology has failed in the wake of a remote work culture exacerbated by the pandemic. Therefore, we are requesting the Commission consider symmetrical service as a minimum threshold for wired home internet solutions.”)

²⁶ Comments of Los Angeles County (filed Dec. 8, 2021) at 3. (The FCC should adopt minimum standards that, at least, reflect the FCC’s definition of broadband at 25 Mbps / 3 Mbps. However, these standards should evolve as FCC’s definition of broadband also evolves to more accurately reflect the internet speeds required to fully participate in digital society.)

²⁷ Comments of Starry (filed Dec. 8, 2021) at 10 (“As Starry has previously noted on record, the FCC should prioritize reimbursements for broadband plans with speeds that are faster than the current federal definition of broadband (i.e., greater than 25 Mbps download/3 Mbps upload), to meaningfully connect consumers.”)

²⁸ Los Angeles County Comments at 3.

²⁹ See e.g. T-Mobile Comments at 12, 13 calling on the Commission to decline to adopt any minimum service standards, consistent with the EBB Program.

³⁰ Frontier at p. 3 shared that its “ACP customers will have access to 50/50 Mbps fiber internet, where available, and up to 25/2 Mbps DSL, where available, at a cost of \$19.99, which would be fully covered by the ACP benefit, and 500/500 Mbps fiber internet, where available, at a cost of \$49.99, or \$19.99 after the ACP credit.”

unintended consequence of penalizing households within areas where 25/3 Mbps or faster broadband speeds are not currently available...”³¹ Local Governments are sensitive to areas that lack true broadband speeds, but simply point out that President Biden and Congress have established multiple programs in the Infrastructure Investment and Jobs Act, funded in the tens of billions of dollars, to address unserved and underserved areas.³² Therefore, the speeds, or lack thereof, found in unserved and underserved areas should not be used as a barrier to providing the millions of eligible households in served areas with competitive speeds.

Local Governments agree with the ACA that the Commission should “act judiciously in adopting regulatory obligations for providers, recognizing that overly burdensome obligations will deter participation from smaller providers in this voluntary program.”³³ While Local Governments believe ACP households should receive 100/20 Mbps service, or 25 Mbps symmetrical service.³⁴ Local Governments would point out that after offering the admonition that limiting standard requirements could result in more providers participating in ACP, even ACA calls on the Commission to establish a service standards of no less than a 25/3 Mbps.³⁵

E. Ensure Homeless & Shelter Household Eligibility By Adding Two Words and a Comma

In our Comments, Local Governments requested that as FCC expands the reach of E-Rate supported programs through the EBB/ACP programs, the Commission’s rules must be sensitive

³¹ Comments of the Wireless Internet Service Providers Association (filed Dec. 8, 2021) at 3.

³² See Comments of Boston et al at 12-16 for a list of these programs.

³³ Comments of ACA (filed Dec. 8, 2021) at 4.

³⁴ The biggest difference in broadband today is need for upload speeds to video conferencing functional for remote work and school (with multiple simultaneous users) from home.

³⁵ Id at 19.

to the needs of households in temporary housing. We wrote that housing instability should not be exacerbated by reducing, if not eliminating, access to broadband connectivity.

In Reply Comments,³⁶ E-Rate Central suggests that the Commission might take a valuable step forward in protecting homeless households by modifying proposed ACT rules by two words and a comma. Local Governments support E-Rate Central’s proposal. Specifically, E-Rate Central suggests the addition “homeless shelters” (highlighted in red) for eligible bulk billing arrangements as outlined in the Public Notice.³⁷ The proposed addition would proceed as follows: “live at a single address, such as senior and student living, mobile home parks, apartment buildings, **homeless shelters**, and federal units, that receive service as part of a bulk billing arrangement where the households are not directly billed for services by their internet service provider....”³⁸

Local Governments further associate themselves with the insights of former FCC and California Public Utility Commissioner Rachel Chong in her filing for the California Emerging Technology Fund. Ms. Chong counsels that EBB and ACP rules should explicitly include homeless shelters as eligible for support under the multiple dwelling unit provisions. Minor rule changes may be required to account for the transient nature of homeless center residents, but this explicit inclusion is imperative for unhoused children who need the Internet to perform school work and homework.³⁹ Local Governments would simply add it is equally important for

³⁶ Reply Comments of E-Rate Central (filed Dec. 15, 2021) *in passim*.

³⁷ Public Notice, ¶ 57.

³⁸ *Id* at 2.

³⁹ Comments of the California Emerging Technology Fund (filed Dec. 8, 2021) at 3, 23. *See also* Comments of E-Rate Central and SHLB (filed Dec. 8, 2021) at 2. (E-rate Central and SHLB encourage the Federal Communications Commission... to adapt the proposed ACP rules for multiple dwelling units to accommodate the transient population in homeless centers.”)

unhoused parents who need the Internet to apply for jobs and government benefits, or continue their education through online courses and certifications.

F. Tracker Must Provide Granular Data to Assist in Program Expansion and Ensure Accurately Measuring Success.

Local Governments and other community partners need to know how many EBB and ACP enrollees are new broadband households and how many are simply low income purchasers that have been converted to the program by their existing provider.⁴⁰ The data provided in the USAC Tracker does not answer that question, nor provide actionable insights for local governments and community partners to grow the program.

Next Century Cities noted, “Local and state governments used the enrollment tracker to inform both their own outreach efforts and those of their community partners. More information could further support local outreach efforts and help community leaders identify ongoing needs.”⁴¹ Following its experiences with the EBB program, and as noted in the Public Notice,⁴² the Commission appears to recognize the need for data collection and performance metrics to determine the success of the Affordable Connectivity Program.

⁴⁰ For example, Census American Community Survey data in Montgomery County, Maryland reveals 21,000 households earning less than \$50,000 per year and lacking home broadband connections. The EBB Tracker reveals 8,000 EBB enrollees in Montgomery County, but provides no insight into whether any of the EBB enrollees are new broadband households or simply converted existing customers. While it is vitally important that poor households that were able to afford broadband prior to the program and who might have lost that service are now protected, the 8,000 number provides no insight into whether the broadband gap in Montgomery County, let alone the nation, has been reduced.

⁴¹ Comments of Next Century Cities (filed Dec. 8, 2021) at 23. *See also* Asian-American Tech Table (filed Dec. 8, 2021) at 4 (Disaggregated demographic data can make a tremendous difference in bridging the digital divide and addressing racial and ethnic inequities among Asian Americans.)

⁴² Public Notice, ¶¶ 117-120.

EducationSuperHighway called on the Commission to measure real progress toward closing the affordability gap by establishing and collecting data that allows it to track how many Americans are connected because of this program.⁴³ Local Governments associate themselves with EducationSuperHighway and numerous other parties⁴⁴ that call on the Commission to provide data that is both granular and actionable at the local level. Such information would assist willing partners, such as Local Governments, to assist the Commission and to “... make trouble-shooting and feedback more efficient.”⁴⁵

As noted below in Section III, *infra*, the greatest challenge facing the Commission is ensuring that all eligible households are aware of and participate in the ACP.⁴⁶ Actionable and meaningful data at the census tract level will result in many willing partners in local government.

⁴³ Comments of EducationSuperHighway (filed Dec. 8, 2021) at 23. *See also* Detroit Comments at 6 (“While the 3 and 5-digit zip code EBB are helpful, the ACP enrollment counts need to be by block groups and or census tracts. This will allow the ACP data to be integrated with other census level data to help show positive digital equity change over time, as well as promoting a sense of local accountability.”) Next Century Cities at 24 (“Including more granular data such as participant demographic information and benefit utilization figures could enable communities to tailor outreach resources.”)

⁴⁴ *See* NLC Comments at 7, Ex Parte of United Church of Christ Media Justice Ministry, Leadership Conference on Civil and Human Rights (filed December 13, 2021) at 2 (“Advocates also asked the FCC for more data, preferably at the ZIP code level, to highlight where fewer applicants sign up for the ACP, geographic areas and points in the application process where applicants are getting stuck, and the ZIP codes that receive more complaints than others. This information will enable advocacy organizations and others to better target outreach at areas that need the most attention.”); Comments of Next Century Cities (filed Dec. 8, 2021) at p. 23-4 (“Including more granular data such as participant demographic information and benefit utilization figures could enable communities to tailor outreach resources.”)

⁴⁵ *See e.g.* Comments of Asian American Tech Table, Asian Americans Advancing Justice, OCA-Asian Pacific American Advocates and National Council of Asian Pacific Americans (filed Dec. 8, 2021) at 2.

⁴⁶ Comments of Vermont Department of Public Service (filed Dec. 8, 2021) at 6 (“[T]he number one complaint VTDPs received about the EBB Program was consumer’s lack of knowledge about whether their provider was participating in the program.”)

G. FCC Should Retain CEP Qualification Criteria

In our Comments,⁴⁷ Local Governments expressed concern that the Commission appears to be predisposed to eliminate the Community Eligibility Provision (“CEP”) as an eligibility criteria for participation in the ACP program.⁴⁸ As understood by Local Governments, the CEP program was created by the Department of Agriculture to streamline eligibility for school lunch programs, and Congress directed that the Commission use the program as an aid to demonstrate EBB/ACP eligibility.⁴⁹ Local Governments are grateful for the support of others like NDIA,⁵⁰ Next Century Cities,⁵¹ NATOA⁵² and the National League of Cities⁵³ for their supportive comments on the need to preserve CEP in the ACP eligibility criteria.

⁴⁷ Local Government Comments at 7-9.

⁴⁸ Public Notice, ¶ 31.

⁴⁹ The process as explained in the FCC Office of Inspector General memo provides; “The Consolidated Appropriations Act permits households with members who qualify for free and reduced-price school lunch or the school breakfast program to enroll in the EBB program. The CEP allows high-poverty schools and school districts (CEP schools) to provide breakfast and lunch at no charge to all students, regardless of income status. The Food Research & Action Center (FRAC) maintains a nationwide list of CEP schools. Under current FCC program rules, if a dependent child of a household attends a CEP school on FRAC’s list, the household qualifies for EBB support.” Memorandum, Office of Inspector General. *Advisory Regarding Fraudulent EBB Enrollments Based On USDA National School Lunch Program Community Eligibility Provision* (rel. Nov. 22, 2021) available at https://www.fcc.gov/sites/default/files/oig_advisory_cep_11222021.pdf (“Memorandum”)

⁵⁰ Comments of NDIA (filed Dec. 8, 2021) at 8 (The CEP program identifies high-poverty schools for free lunch and breakfast for all students, reducing the barriers posed by reliance on parents and guardians filling out applications for the program. This eligibility provision should still continue in the ACP.)

⁵¹ Next Century Cities at 7. (“While using the CEP to automatically approve students may lead to a *de minimis* number of ineligible households receiving program benefits, there is a far greater risk that eligible households may not be able to overcome enrollment obstacles.”)

⁵² NATOA at 7 (“[W]e suggest the Commission retain ACP eligibility for households with students enrolled in schools or school districts participating in the Community Eligibility Provision.”)

⁵³ NLC Comments at 3. (“NLC supports maintaining the decision from EBB to allow households with students enrolled in schools or districts participating in the Community Eligibility Provision

H. Commission Should Resist Work Arounds Proposed by Industry to Perform Unlawful Credit Checks.

In creating the ACP, Congress mandated that a provider “may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider.”⁵⁴ Yet, despite this prohibition, some commenters seek to perform credit checks that they claim are not for the purpose of disqualifying an eligible household but to determine their creditworthiness for additional bundled services.⁵⁵ Local Governments call on the Commission to hold fast to the Congress’ counsel, fail safe, and ban any such practices.

Local Governments associate themselves with the National Consumer Law Center and the United Church of Christ Media Justice Ministry that: “Under the law, including during the soft launch, providers may not use credit checks to keep customers out of the ACP.”⁵⁶

In Boston, the coordinator of the city’s Financial Empowerment/EITC workshops⁵⁷ reported numerous credit check requests when assisting applicants with EBB/ACP. Boston

to participate in ACP, without demonstrating individual qualification for free or reduced-price school lunch or breakfast.”)

⁵⁴ Act at div F, tit. V, sec. 60502(a)(3)(B)(ii), §904(b)(7)(A)(i).

⁵⁵ See e.g., Comments of NCTA (filed Dec. 8, 2021) at 3; Comments of Verizon (filed Dec. 8, 2021) at 11-13; Comments of AT&T (filed Dec. 8, 2021) at 14.

⁵⁶ Reply Comments of the National Consumer Law Center and the United Church of Christ Media Justice Ministry (rec. Dec. 27) at 1, 7-8.

⁵⁷ As referenced in Local Governments Comments at 6, “From January through March of 2022, the City will partner with a larger number of community service agencies to engage over 350 volunteer tax preparers and financial coaches to conduct economic workshops and mentoring programs....Because Boston has noticed that parties qualifying for the EITC are often also qualified for EBB and ACP programs, the City plans to include an EBB application in the information packets of these coaching sessions and to train the EITC counselors to share information about the program.” More information on the program may not be found at <https://ofe.boston.gov/boston-builds-credit/>

offers firsthand experience that credit checks have a chilling effect on applications. And because the sale of additional services is the justification offered by providers, Local Governments suggest that banning such a process protects against ACP eligible households being “sold-up.”

I. Legacy Programs Should Be Eligible for Support, But Not Hold Eligible Households Hostage.

Local Governments agree with parties as varied as the New York State Public Service Commission, Frontier Communications, Inc.⁵⁸ and the National League of Cities⁵⁹ that the Commission should include legacy and grandfathered services as eligible for ACP support.⁶⁰ Failure to do so would result in households being “forced out of plans they otherwise have the right to participate in.”⁶¹

As explained by Frontier, the Commission must adopt the ACP requirement that participating providers “shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider, at the same rates and terms available to households that are not eligible households....”⁶²

Still, Local Governments hope that as the ACP program evolves over time that the Commission and USAC will explore means to obtain maximum benefits for eligible households as the market offers faster speeds for lower prices. So while we agree that legacy programs should be eligible for ACP support, legacy programs cannot be allowed to retard the ability of

⁵⁸ Comments of Frontier (filed Dec. 8, 202) at 5-6.

⁵⁹ NLC Comments at 4. (Supports the inclusion of legacy or grandfathered plans as eligible internet offerings, as part of a larger effort to minimize upselling or down selling.)

⁶⁰ Comments of the New York Public Service Commission (filed Dec. 8, 2021) at 3.

⁶¹ *Id.* at 3.

⁶² Frontier Comments at 6.

eligible households, nor the nation for that matter, to obtain a competitive return on the ACP investment.

Local Governments also continue in our call for the FCC to make existing sponsored programs eligible for ACP support.

J. Sales Commissions Should Not Be Permitted

The Public Notice asks whether sales commissions should be available for ACP sales.⁶³ Local Governments disagree with parties such as AT&T⁶⁴ and Verizon⁶⁵ who call on the Commission to preserve sales commissions for the ACP program. ACP is a Universal fund type of program and the ban on commissions in the Universal Service Fund programs makes sense to apply here. This is especially true given the incentive to cheat that was found in the EBB as documented by the Inspector General's office.

III. OUTREACH IS VITAL AND THE FCC SHOULD ENSURE THAT LOCAL GOVERNMENTS ARE ELIGIBLE AS OUTREACH PARTNERS.

Parties commented that the number one challenge facing the EBB, and now the ACP, was consumers' lack of knowledge about its existence and whether their providers were participating

⁶³ Public Notice, ¶ 115.

⁶⁴ Comments of AT&T Services, Inc (filed Dec. 8, 2021) at 17. (Rule Prohibiting Commissions For Sales Agents Should Not Be Imported Into ACP.)

⁶⁵ Comments of Verizon at 27. ("Just as the Commission declined to apply the Lifeline program's ban on sales commissions to the EBB program, it should decline to apply the sales commission ban to the ACP. ...[I]mposing the Lifeline commission ban on the ACP would create uncertainty about whether existing compensation arrangements and sales processes are permissible under the rule.")

in the program.⁶⁶ Not surprisingly, the Commission sought comment how best to cultivate outreach partners for purposes of ACP's existence and availability.⁶⁷

Local Governments agree with parties counseling that the FCC should increase its outreach efforts at the community level,⁶⁸ with emphasis on marginalized communities,⁶⁹ and include a participatory grant making process⁷⁰ and paid media.⁷¹

Local Governments further agree with the Vermont Department of Public Service that grant funding to outreach partners could help close the knowledge gap regarding ACP availability, specifically, grant funding for outreach efforts into low-income communities with whom outreach partners are in regular contact.⁷² In addition to outreach efforts to expand the ACP's visibility and availability, the Commission should provide resources to trusted institutions to assist unconnected households with enrolling in the National Verifier and Affordable Connectivity Programs⁷³ and to facilitate program eligibility verification. For example, if a

⁶⁶ See e.g. NATOA Comments at 2-4. (The Commission should make available to local governments and non-profit organizations outreach grants to support expanded efforts to promote the Program and to help eligible households enroll in the Program.)

⁶⁷ Public Notice, 112.

⁶⁸ Comments of the National Hispanic Media Coalition (filed Dec. 8, 2021) at 10-12. NHMC, at 6, further counsels that outreach materials should be available in non-English formats, including Spanish.

⁶⁹ Common Cause Comments at 5-7.

⁷⁰ As explained in the MMTC Comments at 18, participatory grant making “covers a wide range of institutional and individual activities such as incorporating grantee feedback into grant guidelines and strategy development, inviting non-Grant makers to sit on foundation boards, crowdfunding, and giving circles.” Cynthia Gibson, *Participatory Grant making: Has its Time Come*, FORD FOUNDATION (Oct. 2018), <https://www.fordfoundation.org/media/3598/has-the-time-come-for-participatory-grant-making.pdf>.

⁷¹ National Hispanic Media Coalition Comments at 12.

⁷² Comments of the Vermont Department of Public Service (filed Dec. 8, 2021) at 6.

⁷³ EducationSuperHighway at 21-23.

housing authority can verify that all of its residents qualify for an ACP eligibility criteria (*i.e.*, public housing), or a community college can verify that certain students are Pell-eligible, those institutions could collect participant information and facilitate verification of program eligibility *en masse*. Such institutional partnership would alleviate the administrative burden on participant and free participants, creating a simpler ACP enrollment process.

Local Governments simply ask that the Commission clearly establish local governments are eligible for support given to marginalized communities on a daily basis, and more importantly, stand ready to assist.

IV. THE COMMISSION MUST ADDRESS THE NEED FOR DEVICES.

Local Governments in the EBB docket (WC Docket No. 21-93) filed an April 2021 *ex parte*,⁷⁴ expressing dissatisfaction with the participation of EBB providers in making available connecting devices. “[Local Governments] discussed how at this point, it does not seem like a number of providers are participating in the device side of the EBB. Local Governments inquired as to whether in the next stage of the program, the distribution of connected devices can be maximized by utilizing providers beyond broadband service providers.”⁷⁵ While Local Governments are pleased that the Commission is exploring means to address this issue, we are disappointed that so few providers have stepped up to address the challenge. Local Governments

⁷⁴ Local Government *Ex Parte*, WC Docket No. 21-93, (filed April 23, 2021) available at https://ecfsapi.fcc.gov/file/1042331943467/Ex%20Parte_Bonner.pdf

⁷⁵ *Id.* at 2. *See also* Detroit Comments at 4. (“The device portion within EBB was very disappointing. Major providers did not participate, and the Commission forcing households to choose between receiving internet from a non-device participating provider or a computer from lesser-known providers was incredibly frustrating. The Commission should, in the ACP, allow for device support from any participating ACP provider and separately, internet support from any participating provider as well.”)

associate themselves with a number of suggestions found in the comments filed and highlight those here.

Local Governments agree with parties that call on the FCC to allow providers to partner with device manufacturers or retail outlets to boost the availability use of connected devices.⁷⁶ Moreover, eligible devices should be compatible with all standard Wi-Fi and internet equipment, and devices should be transferrable by the household for use with another ISP.⁷⁷ “The ACP should ... enable and empower consumers to choose the technology that works for them, and at the same time adopt policies that will coax consumers to higher levels of digital literacy and competence as they gain knowledge and skill.”⁷⁸

Finally, Local Governments also agree with the Michigan Public Service Commission that “The full benefits of the [ACP} ... should not be restricted by previous awards granted by other programs.”⁷⁹ Therefore, an EBB household that received a connected device should be eligible for a second device as part of ACP benefits.

V. CONCLUSION.

Local Governments are enthusiastic about the difference ACP can make. This enthusiasm has been reflected in the efforts of local governments to create ACP-like programs at the local level over the past three years. We hope that the Commission will build on the lessons local governments have learned and sought to impart in this and previous filings. We also hope

⁷⁶ See Public Knowledge and Common Sense Media, NATOA (.7) and NCC at 15-18 (The Commission should expand who is allowed to offer devices and what devices are eligible.).

⁷⁷ Los Angeles County Comments at 3.

⁷⁸ Reply Comments of the National Consumer Law Center and the United Church of Christ Media Justice Ministry at 11.

⁷⁹ Comments of Michigan Public Service Commission (filed Dec. 8, 2021) at 7.

that as the FCC looks for outreach partners in ACP availability and enrollment that it will accept the offer of partnership Local Governments offer.

Respectfully submitted,

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Counsel for the Local Governments

EXHIBIT A

Boston, Massachusetts, one of the nation's oldest municipalities, is a community that seeks to be on the cutting edge of science, education and digital inclusion. Boston has many firsts to its credit: the nation's first public park, first public or state school, and first subway system. In 1799, Boston established the first board of health and the first health department in the United States with Paul Revere named as the first health officer. Boston also celebrates what it believes is the first comprehensive digital inclusion program run by any municipality in the United States: *Tech Goes Home*. *Tech Goes Home* challenges deep digital inequity by empowering community members to access and use digital tools to overcome systemic barriers and advance lives. Simply put, *Tech Goes Home* makes available for those that qualify and complete its training program computers, internet access, and training. Boston's goals are to ensure that students can do homework, adults can find jobs and manage finances, seniors can connect with loved ones, linguistic minorities can learn English remotely, and all can access telehealth. A copy of Tech Goes Home Annual Report can be visited online at https://47ab9e76-c79f-45c8-8473-ff7df2a7cd56.filesusr.com/ugd/f01914_2a3f84485cf94608bb8900b53fb40864.pdf.

Chicago, Illinois is proud to be known as the city of broad shoulders, a global, diverse city home to 77 neighborhoods and the nation's first skyscraper, all of which the City proudly shares at <https://www.chicago.gov/city/en/about/facts.html>. For purposes of these comments, Chicago is most proud to be a connected community that seeks to ensure all of its residents can connect to affordable at-home broadband internet. In the middle of the COVID-19 pandemic (June 25, 2020), the City launched "Chicago Connected," a \$50M public-private partnership, that has provided internet to nearly 64,000 eligible Chicago Public Schools (CPS) students in close to

42,000 households at no cost to them. 27% of these families did not have internet prior to this program. Comcast, RCN, and T-Mobile are the program's participating providers. Chicago Connected also works to equip families with the tools and skills they need to use the internet to its full potential by launching digital literacy and professional skill building trainings and certifications. A summary of Chicago Connected's impact after its first year and may be found online: <https://kidsfirstchicago.org/chicago-connected-year-review>

The **City of Los Angeles, California** was the first to have commercially available 5G in the United States in 2018 and continues to expand internet access through smart and equitable public-private partnerships. The City formed a Telecommunications and Digital Equity Forum with every infrastructure and telecom provider in Los Angeles to find ways to accelerate the deployment and build out of our critical public and private infrastructure. At the same time, Los Angeles continues to have a large number of households without adequate access (or any access) to the Internet. This is due to a combination of affordability, specific locations, and digital literacy. During the pandemic, in partnership with T-Mobile, the City has provided 18,000 Wi-Fi hotspots to our homeless and foster care students (equaling 90,000 free years of internet access), and with Starry Internet provided more than 10,000 public housing households with free high-speed internet. However, the long-range needs remain unmitigated until we are able to provide equitable, affordable, and future-proofed speedy internet to every household and business in our city of 4,000,000 people and 500,000 businesses. Our digital inclusion efforts are done in conjunction with: the L.A. Unified School District (650,000 students), the L.A. Community College District, the country's largest community college system; Everyone On, Human IT, California State, and L.A. County. We will continue to advocate for national investments in the

middle-mile infrastructure, extension of the broadband benefit program, future-proofing of the standards for access speeds, and digital literacy programs. You can see more about our program at <https://getconnectedlosangeles.lacity.org/> .

Montgomery County, Maryland is proud of the efforts the community has made to ensure that none of our low income residents are left behind during the Covid pandemic. These efforts have taken three distinct paths: sponsored school connection programs, public private partnerships that leverage municipal broadband, and digital equity outreach and educational efforts. An array of the low cost Internet offerings available to low income families in Montgomery County can be found at <https://montgomerycountymd.gov/obp/digital-equity.html>.

Washington, DC has been an active participant in the earlier versions of this docket (Emergency Broadband Benefits Program and Emergency Connection Fund). The District's primary efforts in addressing digital inclusion may be found at [Tech Together DC](#). This is a values-led partnership between the DC government, the non-profit community, academia, and the industry to bridge the digital divide in our community through access, training, and opportunity. In addition, since September 2020, the District has assisted DC residents meet their remote learning needs through [Internet for All](#). Internet for All seeks to connect up to 25,000 households with PK3-12th grade students who are enrolled at DC traditional and charter public schools. Families must be eligible for SNAP or TANF benefits. As exemplified by Exhibit B, DC's input into these comments and the attachment are based on its direct experience with ISPs, Internet for All beneficiaries, and school officials.

The Texas Coalition of Cities For Utility Issues (“TCCFUI”) is a coalition of more than 50 Texas municipalities dedicated to protecting and supporting the interests of the citizens and cities of Texas with regard to utility issues. The Coalition is comprised of large municipalities and rural villages. TCCFUI monitors the activities of the United States Congress, the Texas Legislature, the Public Utility Commission of Texas, the Texas Railroad Commission, and the Federal Communications Commission on utility issues of importance to cities.

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